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**OCT 28 2009**

**OFFICE OF PETITIONS**

In re Application of  
McMonagle et al.  
Application No. 10/711,550  
Filed: September 24, 2004  
Attorney Docket No. 030848-00026

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.183 to waive 37 CFR 1.131 to the extent that it requires that all of the named inventors execute the declaration filed under 37 CFR 1.131 and the petition under 37 CFR 1.137(b) to revive the above-identified application, which were both filed February 9, 2009.

The petitions are **GRANTED**.

In regard to the petition under 37 CFR 1.183, petitioners assert that, while all of the named inventors contributed to the conception of the claimed invention which is under rejection, only Patrick S. McMonagle has agreed to execute the attached declaration under 37 CFR 1.131 in support of establishing conception of the claimed invention prior to August 5, 2003.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question. Here, efforts were made to obtain a signature from inventor Douglas G. Smith for the declaration under 37 CFR 1.131 and the above-identified application was granted status under 37 CFR 1.47(a) on June 15, 2005 for earlier efforts to obtain participation from inventor Richard L. Norman. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent that they require Douglas G. Smith and Richard L. Norman to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the reference and that the claimed invention was the product of the joint inventors. See In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935).

In regard to the petition under 37 CFR 1.137(b), the application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 15, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 16, 2008. A Notice of Abandonment was mailed on September 17, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a declaration under 37 CFR 1.131 and arguments, (2) the petition fee of \$1620.00; and (3) an adequate statement of unintentional delay.

This application is being referred to Technology Center AU 3696 for appropriate action in the normal course of business on the reply received on February 9, 2009.

Any questions concerning this matter may be directed to the undersigned at (571) 272-6692. Inquiries concerning the examination or status of the application should be directed to the Technology Center.



Christopher Bottorff  
Petitions Examiner  
Office of Petitions